

**STORAGE NAME:** h3371.brc

**DATE:** March 12, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS REGULATION AND CONSUMER AFFAIRS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 3371

**RELATING TO:** Sales Contracts for Farm Equipment & Motor Vehicle Repair Parts

**SPONSOR(S):** Representative Hill and others

**COMPANION BILL(S):** SB 280 (i)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS
  - (2) CIVIL JUSTICE AND CLAIMS
  - (3) AGRICULTURE
  - (4)
  - (5)
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I. SUMMARY:

This bill revises the Farm Equipment Manufacturers and Dealers Act to require that the termination of franchise contracts relating to repair parts be made in good faith and with good cause. It provides for liability when there is no good cause for termination. It prohibits certain acts by manufacturers of motor vehicle and truck repair parts. Regulations are specified with respect to franchise agreements between manufacturers and retail or wholesale dealers or distributors of repair parts for farm equipment, motor vehicles and trucks.

The bill would take effect October 1 of the year in which enacted.

There is no fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Large, national companies manufacture repair parts for farm equipment and motor vehicles and enter into written contracts with local, generally small businesses to distribute those parts for them. The distributors buy the parts from the manufacturers, often carrying inventories worth thousands of dollars. Manufacturers agree, by contract, to assist distributors in selling the repair parts through direct advertising, co-operative advertising, and warranty support. The contracts are written by the manufacturers who offer them to the distributors without negotiation.

Some repair part distributors allege that, as repair part manufacturing entities merge or otherwise change ownership, they are left with fewer rights and remedies, particularly in the areas of warranty, parts return, and inventory repurchases.

Chapter 686, Florida Statutes, creates the Farm Equipment Manufacturers and Dealers Act and the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers and Servicing Dealers Act. Both laws require manufacturers to repurchase inventory upon termination of their agreement (contract) with their dealers (distributors), s. 686.407 and 686.607, F.S., respectively.

B. EFFECT OF PROPOSED CHANGES:

The Farm Equipment Manufacturers and Dealers Act is amendment to require manufacturers and distributors of farm implements or repair parts for farm machinery, motor vehicles, and trucks to adhere to the conditions of their contract. Additionally, manufacturers may not terminate the contract without good cause. The phrase "good cause" is defined as failure of the distributor to comply with the conditions of the written contract, and any determination by the manufacturer that the distributor failed to comply must be made in good faith. "Good faith" is not defined. All existing contracts that have no effective date are subject to the provisions of the bill, as well as any entered into, amended, or renewed after the act takes effect.

In any action brought against a manufacturer for violation of the act, the manufacturer must prove the contract termination, cancellation, or non-renewal was made in good faith for good cause. If it cannot be shown, the manufacturer is liable for all damages suffered by the distributor, including the cost of litigation and attorney's fees. These obligations extend to a purchaser of a manufacturing business.

Additionally, a manufacturer of repair parts for motor vehicles or trucks is prohibited from:

1. Coercing a distributor into accepting merchandise the distributor did not order.
2. Requiring a distributor to purchase other goods or services in order to buy repair parts.
3. Coercing a distributor into refusing to carry repair parts from another manufacturer.
4. Discriminating in the prices it charges for repair parts.
5. Attempting or threatening to terminate, or substantially changing, a contract for any reason other than failure of the distributor to comply with the contract.

A manufacturer of repair parts for motor vehicles or trucks that does not comply with the act is liable to the retail distributor for 100 percent of the cost of the parts and transportation paid by the distributor, and 85 percent of the current net price of the parts, plus 5 percent of the handling, loading and freight charges paid by the distributor.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Certain manufacturers of repair parts are prohibited from making contractual changes under specified circumstances.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

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(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 686.4035, Florida Statutes, is created.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates s. 686.4035, F.S., relating to termination of franchise contracts between manufacturers of repair parts for farm equipment and distributors of those parts; and providing for liability.

Section 2. Creates a new section of law relating to termination of franchise contracts between manufacturers of repair parts for motor vehicles and trucks and distributors of those parts; providing for liability; and prohibiting certain acts by manufacturers of repair parts for motor vehicles and trucks.

Section 3. Provides that the act takes effect October 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

A parts manufacturing company that formed as a result of the merger of two companies could incur the cost of having to continue honoring contracts that have no expiration date.

2. Direct Private Sector Benefits:

Distributors of certain repair parts would benefit from the protections provided by the bill against unscrupulous business practices of certain manufacturing companies.

3. Effects on Competition, Private Enterprise and Employment Markets:

Distributors would be protected from unfair competition caused by certain manufacturers entering into a distribution relationship with another, nearby distributor while the first business is left with the inventory of that manufacturer's parts and cannot replenish those parts.

Manufacturers that merge and form another company would be prohibited from terminating existing distribution contracts.

D. **FISCAL COMMENTS:**

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or take any action requiring fund expenditure.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

In the aggregate, this bill does not reduce municipality or county authority to raise revenues.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

The bill contains several inconsistencies and technical deficiencies:

1. The catch lines on pages 1 and 3 refer to franchises while it appears the bill intends to relate to contractual sales. Motor vehicle franchises are regulated under ss. 320.60 - 320.70, F.S.
2. Section 1 of the bill establishes regulations relating to repair parts for farm implements and farm machinery. However, sections 686.40 - 686.418, Farm Equipment Manufacturers and Dealers Act, contain similar provisions.
3. Certain acts are prohibited by manufacturer's of motor vehicle and truck repair parts, but there is no such prohibition for manufacturer's of repair parts for farm equipment.
4. The provisions relating to terminating contracts for good cause includes "failure to renew a contract." This language appears to require parties to enter into contracts which is inconsistent with the basic principles of contract law.
5. The bill amends the Farm Equipment Manufacturers and Dealers Act, yet includes provisions relating to motor vehicles and trucks.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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